9-30-04

AF/3628

10269/13 (HSX/001 CON1)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicants/ Appellants : Keiser et al.

Application No. : 09/465,607 Confirmation No. : 9080

Filed : December 17, 1999

For : COMPUTER-IMPLEMENTED SECURITIES TRADING SYSTEM WITH A VIRTUAL SPECIALIST FUNCTION

Group Art Unit : 3628

Examiner : Clement B. Graham

New York, New York 10020
September 29, 2004

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Date of Deposit: September 29, 2004

I hereby certify that this certification and the following papers and fees:

1. Applicant/Appellant's Request for Reinstatement of the Appeal under 37 C.F.R. § 1.193(b)(2)(ii) and Supplemental Appeal Brief under 37 C.F.R. § 1.192 (in triplicate);

2. Authorization to Charge Deposit Account (in duplicate); and

3. Return postcard

are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. § 1.10 on the date indicated above and are addressed

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AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT

Sir:

The Director is hereby authorized to charge any additional fee due, or credit any overpayment, in connection with the accompanying Supplemental Appeal Brief Under 37 C.F.R. § 1.192 and § 1.193(b)(2)(ii), to Deposit Account No. 06-1075. A duplicate copy of this Authorization is submitted herewith.

Respectfully submitted,

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Express Mail Label No. EV371745924US

HSX/001 CON1

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	)	
Keiser et al.	)	Art Unit: 3628
	)	
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	)	
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REQUEST FOR REINSTATEMENT OF THE APPEAL UNDER 37 C.F.R. § 1.193(b)(2)(ii) AND SUPPLEMENTAL APPEAL BRIEF UNDER 37 C.F.R. § 1.192

Sir:

Pursuant to 37 C.F.R. § 1.193(b)(2)(ii) and 37 C.F.R. § 1.192, applicants/appellants ("applicants") file this Request for Reinstatement of the Appeal and Supplemental Appeal Brief in response to the June 29, 2004, Office Action rejecting claims 1-22 which are pending in this application.

The Director is authorized to charge any fees that may be due, or to credit any overpayment, in connection with the

filing of this Supplemental Appeal Brief, to Deposit Account No. 06-1075. A separate Authorization to Charge Deposit Account is enclosed for that purpose (in duplicate).

In view of the arguments and authorities set forth below, this Board should find the rejection of claims 1-22 of this application to be in error, and should reverse it. Claims 1-22 are patentable.

This Brief has the following appendices:

Claims Appendix: Copy of claims 1-22 involved in this Appeal.

Related Proceedings Appendix: Copy of Examiner's Answer involved in a related appeal.

I. REAL PARTY IN INTEREST

The real party in interest of this application is CFPH, L.L.C., having a business at 135 E. 57th Street, 5th floor, New York, NY 10022.

II. RELATED APPEALS AND INTERFERENCES

A Notice of Appeal was filed on September 30, 2003 in related Application No. 09/382,907, filed on August 25, 1999. An appeal brief was filed in that related application on March

29, 2004. An Examiner's Answer was rendered in that application on July 2, 2004 (see Related Proceedings Appendix).

III. REQUEST FOR REINSTATEMENT OF THE APPEAL AND STATUS OF THE CLAIMS

Claims 1-22 are pending and stand rejected in the present application. Applicants filed an Appeal Brief on February 11, 2004. The Examiner responded with an Office Action that reopened prosecution on June 29, 2004. As stated in the Office Action, Applicants had two options:

(1) file a reply under 37 C.F.R. § 1.111; or,

(2) request reinstatement of the appeal.

Applicants hereby request reinstatement of the appeal, and Applicant's request is accompanied by this Supplemental Appeal Brief.

In the Office Action mailed on June 29, 2004, claims 1-22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,724,524 to Hunt et al ("Hunt") in view of U.S. Patent No. 6,262,321 to Daughtery, III (Hereinafter "Daughtery, III").

Applicants appeal from the rejection of claims 1-22. For the reasons set forth herein, applicants respectfully submit that the rejection of claims 1-22 should be overturned by the Board of Patent Appeals.

IV. STATUS OF AMENDMENTS

There have been no amendments to any of the pending claims since the January 14, 2003 final rejection.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

Applicants' invention, as claimed by claims 1-22, is directed to methods and systems for trading derivative financial instruments that represent a movie or movie talent. Each of the independent claims specifically recites "a derivative financial instrument that selectively represents a movie or a movie talent in an entertainment industry, said movie corresponding to a stock and said move talent corresponding to a bond." Applicants' claims further recite receiving a first order to buy such an instrument, receiving a second order to sell such an instrument, setting a market price based on the received orders, and executing a trade at the set market price. A computer-implemented stock exchange is provided, which may be used for a simulation, a game or a trading system for the claimed instruments.

The following table sets forth exemplary support for the claimed subject matter of the independent claims as set forth in the specification:

Claim 1	The Present Specification
A method for trading a plurality of derivative financial instruments over the Internet, comprising:	See, e.g., page 3, lines 11-12. See also, e.g., FIG. 3.
receiving a first order to buy a derivative financial instrument that selectively	See, e.g., page 3, lines 12-18.

represents a movie or a movie talent in an entertainment industry, said movie corresponding to a stock and said movie talent corresponding to a bond for trading over the Internet;	
receiving a second order to sell said derivative financial instrument;	See, e.g., page 3, lines 12-18.
setting a market price based on the received first and second orders; and	See, e.g., page 3, lines 12-18.
executing a trade at the set market price.	See, e.g., page 3, lines 12-18. See, e.g., FIG. 3, element 302.

Claim 10	The Present Specification
A system for trading a plurality of derivative financial instruments over the Internet, comprising:	See, e.g., page 3, lines 11-12. See also, e.g., FIG. 3.
means for receiving a first order to buy a derivative financial instrument that selectively represents a movie or a movie talent in an entertainment industry, said movie corresponding to a stock and said movie talent corresponding to a bond for trading over the Internet;	See, e.g., page 3, lines 12-18.
means for receiving a second order to sell said derivative financial instrument;	See, e.g., page 3, lines 12-18.
means for setting a market price based on the received first and second orders; and	See, e.g., page 3, lines 12-18.
means for executing a trade at the set market price.	See, e.g., page 3, lines 12-18. See, e.g., FIG. 3, element 302.

Claim 19	The Present Specification
A computer-readable storage medium for storing program code means for, when executed, causing a computer to perform a method for trading a plurality of derivative financial instruments over the Internet, the method comprising:	See, e.g., page 7, lines 9-11.
receiving a first order to buy a derivative financial instrument that selectively represents a movie or a movie talent in an entertainment industry, said movie corresponding to a stock and said movie talent corresponding to a bond for trading over the Internet;	See, e.g., page 3, line 12-18.
receiving a second order to sell said derivative financial instrument;	See, e.g., page 3, line 12-18.
setting a market price based on the received first and second orders; and	See, e.g., page 3, line 12-18.
executing a trade at the set market price.	See, e.g., page 3, line 12-18. See, e.g., FIG. 3, element 302.

Claim 20	The Present Specification
A method for trading a plurality of derivative financial instruments over the Internet, comprising:	See, e.g., page 3, lines 11-12. See also, e.g., FIG. 3.
receiving a first order to buy a derivative financial instrument that selectively represents a movie or movie	See, e.g., page 3, lines 12-18.

talent in an entertainment industry, said movie corresponding to a stock and said movie talent corresponding to a bond for trading over the Internet;	
receiving a second order to sell said derivative financial instrument;	See, e.g., page 3, lines 12-18.
setting a market price based at least in part on criteria associated with the movie or the movie talent; and	See, e.g., page 11, lines 17-20.
executing a trade at the set market price.	See, e.g., page 3, lines 12-18. See, e.g., FIG. 3, element 302.

Claim 21	The Present Specification
A system for trading a plurality of derivative financial instruments over the Internet, comprising:	See, e.g., page 7, lines 9-11.
means for receiving a first order to buy a derivative financial instrument that selectively represents a movie or movie talent in an entertainment industry, said movie corresponding to a stock and said movie talent corresponding to a bond for trading over the Internet;	See, e.g., page 3, line 12-18.
means for receiving a second order to sell said derivative financial instrument;	See, e.g., page 3, line 12-18.
means for setting a market price based at least in part on criteria associated with the movie or the movie talent; and	See, e.g., page 11, line 17-20.
means for executing a trade at the set market price.	See, e.g., page 3, line 12-18. See, e.g., FIG. 3, element 302.

Claim 22	The Present Specification
A computer-readable storage medium for storing program code means for, when executed, causing a computer to perform a method for trading a plurality of derivative financial instruments over the Internet, comprising:	See, e.g., page 7, lines 9-11.
receiving a first order to buy a derivative financial instrument that selectively represents a movie or movie talent in an entertainment industry, said movie corresponding to a stock and said movie talent corresponding to a bond for trading over the Internet;	See, e.g., page 3, line 12-18.
receiving a second order to sell said derivative financial instrument;	See, e.g., page 3, line 12-18.
setting a market price based at least in part on criteria associated with the movie or the movie talent; and	See, e.g., page 11, line 17-20.
executing a trade at the set market price.	See, e.g., page 3, line 12-18. See, e.g., FIG. 3, element 302.

Trading systems have existed in which conventional derivative financial instruments have been traded. However, such conventional instruments relate to securities or to commodities. For example, the New York Stock Exchange has traded derivative financial instruments relating to securities,

and the Chicago Mercantile Exchange has traded derivative financial instruments relating to commodities.

In contrast, as defined, for example, on page 3, line 15, of the specification, applicants' invention is directed to the trading of "instruments representing movies, talent, CDs, and television programs." Such unique instruments have new and different characteristics than the derivative financial instruments in the prior art. For example, these new instruments have a market price that is dependent upon criteria associated with a movie or movie talent, such that an initial price may be based on a movie's potential box office revenue (see, *e.g.*, claims 2 and 11). Other examples include setting the yield for these instruments based on the popularity of a movie talent (see, *e.g.*, claims 3 and 12) and setting the market price of these instruments to reflect the current production status of a movie (*e.g.*, claims 7 and 16) or expected box office revenue of a movie (*e.g.*, claims 8, 9, 17, and 18). Thus, applicants' invention enables speculation, investment and trading of derivative financial instruments that represent a movie or movie talent, unlike anything in the prior art.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The issue in this appeal is whether claims 1-22 are obvious under 35 U.S.C. § 103(a) based on Hunt in view of Daughtery, III.

Applicants divide the rejected claims in four separate groups as follows:

Group 1 - claims 1, 4-10 and 13-19;

Group 2 - claims 2 and 11;

Group 3 -claims 3 and 12; and

Group 4 - claims 20-22.

Each of claims 1-22 was subject to the same rejection in the Office Action.

In accordance with the requirements of 37 C.F.R. § 1.192(c)(7) for consideration of the separate patentability of a plurality of claims subject to the same rejection, applicants submit that each of these Groups of claims does not stand or fall with any other Group of claims, and applicants provide argument below why each of these Groups of claims is separately patentable.

VII. ARGUMENT

In the Office Action dated June 29, 2004, the Examiner rejected claims 1-22 under 35 U.S.C. § 103(a) as being obvious over Hunt in view of Daughtery, III. Applicants respectfully

traverse this rejection and request that it be overturned for at least the reasons set forth below.

A. GROUP ONE CLAIMS

The Examiner's argument that the first Group of claims (1, 4-10 and 13-19) is unpatentable as obvious over Hunt in view of Daughtery, III, is fundamentally flawed because the Examiner has not shown that all of the limitations of the claims are present in any single reference or in an combination of references. Independent claim 1 recites:

> 1. A method for trading a plurality of derivative financial instruments over the Internet, comprising:
>
> receiving a first order to buy *a derivative financial instrument that selectively represents a movie or a movie talent in an entertainment industry, said movie corresponding to a stock and said movie talent corresponding to a bond* for trading over the Internet;
>
> receiving a second order to sell said derivative financial instrument;
>
> setting a market price based on the received first and second orders; and
>
> executing a trade at the set market price. (Emphasis supplied).

The emphasized limitation, which also appears in independent claims 10 and 19, is not present in the prior art. Applicants have repeatedly advised the Examiner that they are not aware of any prior art that discloses such instruments, and the Examiner

has repeatedly failed to supply any reference that discloses any such instrument. Indeed, the Examiner acknowledged that there is no teaching or suggestion in the art of such instruments in his June 29, 2004, Office Action at page 3:

> The difference between the claimed invention and the system of Hunt and Daughtery, III, is that the claimed derivative instrument represents a movie corresponding to a stock and a movie talent corresponding to a bond for trading over the network.

Even earlier in the prosecution, the Examiner made an even broader admission in his December 20, 2000 Office Action at page 3:

> The prior art taken alone or in combination fails to teach or suggest executing a trade at a set market price for a financial instrument selectively representing a movie corresponding to a stock and a movie talent corresponding to a bond taken in combination with a computer-readable storage medium for causing a computer to perform a trade over the Internet as recited in independent claim 19.

The Examiner's subsequent reliance on Hunt in view of Daughtery, III, to reject the claims under 35 U.S.C. § 103(a) fails because neither Hunt nor Daughtery, III, teaches or suggests such instruments. Hunt describes a system for trading derivative instruments that relate to capacity for shipment by trucks, freight cars, etc. Hunt neither teaches nor suggests that a derivative instrument may relate to movies or movie talent. Nor does Hunt teach or suggest any of the properties of

such instruments, described above. And Hunt does not teach or suggest any system or method for trading such instruments.

Daughtery, III, describes an apparatus and process for receiving and storing data that relate to assets such as corn, wheat, etc. Daughtery, III, neither teaches nor suggests that an asset may relate to movies or movie talent. Nor does Daughtery, III, teach or suggest any of the properties of a derivative instrument relating to movies or movie talent. And Daughtery, III, does not teach or suggest any system or method for trading derivative instruments relating to movies or movie talent. As the Examiner previously admitted in an Office Action four years ago, and again admitted in this most recent Office Action, no prior art references either alone or in combination teach or suggest the claimed trading of instruments that represent a movie or a movie talent.

The Examiner argues in the Office Action that, because derivative instruments represent a variety of assets, Hunt in view of Daughtery, III, would produce the same result as the claimed invention *if* Hunt in view of Daughtery, III, were used with the claimed instruments. The Examiner's argument fails because there is no teaching in the prior art to make that combination. A determination of obviousness of a claimed invention requires that all of the claim limitations be taught

or suggested by the prior art. *WMS Gaming, Inc. v. International Game Technology*, 184 F.3d 1339, 1359, 51 USPQ2d 1385, 1399 (Fed. Cir. 1999). Where, as here, the Examiner fails to establish a *prima facie* case of unpatentability, the applicant is entitled to grant of the patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). Hunt in view of Daughtery, III, the only references relied upon by the Examiner in making the obviousness rejection, do not provide the required teaching or suggestion of a derivative financial instrument representative of a movie or a movie talent. Nor does anything else in the prior art.

Moreover, even assuming that there were some teaching or suggestion in the prior art of the claimed instruments (there is none), the Examiner fails to provide any motivation to modify the system described in Hunt for carrier space derivatives to be used for trading instruments that represent movies or movie talent. Nor does the Examiner provide any motivation to modify the apparatus and process described in Daughtery, III, to be used for trading instruments that represent movies or movie talent. The teaching or suggestion to make the claimed combination must be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991). The Examiner has not even attempted to make

the requisite showing of any motivation to make the claimed combination.

Thus, the Examiner has failed to establish a *prima facie* case of obviousness, and independent claims 1, 10 and 19 (and claims 4-9 and 13-18, which are dependent on those independent claims) are patentable.

B. GROUP TWO CLAIMS

The Examiner's argument that the Group Two Claims (2 and 11) are unpatentable as obvious over Hunt in view of Daughtery, III, fails for at least two reasons.

First, each of these claims is dependent on one of the claims described in connection with Group One (claim 2 is dependent on claim 1, and claim 11 is dependent on claim 10). For this reason alone, each of these claims is patentable for the same reasons discussed above in connection with the Group One Claims.

Second, the Group Two Claims are patentable because they add limitations that are neither taught nor suggested by the prior art. In particular, claim 2 recites:

> The method according to claim 1, further comprising setting a price for a new stock offering on the basis of a potential box office revenue for a movie represented by said new stock offering.

and claim 11 recites:

> The system according to claim 10, further comprising means for setting a price for a new stock offering on the basis of a potential box office revenue for a movie represented by said new stock offering.

The prior art does not disclose the additional limitation of these dependent claims. Indeed, the Examiner did not reject these claims for any reasons other than the reasons set forth for independent claims 1 and 10. And the Examiner has not cited any reference - including Hunt or Daughtery, III - that teaches or suggests the claimed limitation. Moreover, there is no reference that provides any teaching or motivation that Hunt or Daughtery, III, should be combined with another reference to make the claimed invention. Accordingly, the Examiner has not provided the required *prima facie* showing that claims 2 and 11 are obvious, and the improper rejection of claims 2 and 11 should be overturned.

C. GROUP THREE CLAIMS

The Examiner's argument that the Group Three Claims (3 and 12) are unpatentable as obvious over Hunt in view of Daughtery, III, likewise fails for at least two reasons.

First, each of these claims is dependent on one of the claims described in connection with Group One (claim 3 is dependent on claim 1, and claim 12 is dependent on claim 10). For this reason alone, each of these claims is patentable for

the same reasons discussed above in connection with the Group One Claims.

Second, the Group Three Claims are patentable because they add limitations that are neither taught nor suggested by the prior art. In particular, claim 3 recites:

> The method according to claim 1, further comprising setting a price for a new bond offering on the basis of a talent's popularity rating in the entertainment industry, such that one bond representing one talent with a low popularity rating is issued with a higher yield than another bond representing another talent with a high popularity rating.

and claim 12 recites:

> The method according to claim 1, further comprising setting a price for a new bond offering on the basis of a talent's popularity rating in the entertainment industry, such that one bond representing one talent with a low popularity rating is issued with a higher yield than another bond representing another talent with a high popularity rating.

The prior art does not disclose the additional limitation of these dependent claims. Indeed, the Examiner did not reject these claims for any reasons other than the reasons set forth for independent claims 1 and 10. And the Examiner has not cited any reference - including Hunt or Daughtery, III - that teaches or suggests the claimed limitation. Moreover, there is no reference that provides any teaching or motivation that Hunt or Daughtery, III, should be combined with another

reference to make the claimed invention. Accordingly, the Examiner has not provided the required *prima facie* showing that claims 3 and 12 are obvious, and the improper rejection of claims 3 and 12 should be overturned.

D. GROUP FOUR CLAIMS

The Examiner's argument that the Group Four Claims (independent claims 20-22) are unpatentable as obvious over Hunt in view of Daughtery, III, fails for at least two reasons.

Claim 20 recites the following limitations:

> A method for trading a plurality of derivative financial instruments over the Internet, comprising:
>
> receiving a first order to buy a *derivative financial instrument that selectively represents a movie or movie talent in an entertainment industry, said movie corresponding to a stock and said movie talent corresponding to a bond* for trading over the Internet;
>
> receiving a second order to sell said derivative financial instrument;
>
> setting a market price *based at least in part on criteria associated with the movie or the movie talent*; and
>
> executing a trade at the set market price.

(Emphasis supplied). Comparable limitations are found in claims 21 and 22 (see Claims Appendix).

The first emphasized limitation in claim 20 is the same as the limitation in claim 1, discussed above. Thus, each

of claims 20-22 is patentable for the same reasons that claim 1 is patentable, namely, that there is no teaching or suggestion in the prior art of this limitation or of making the claimed combination having this limitation. Just as with claim 1, the Examiner has not made a *prima facie* showing that claims 20-22 are obvious.

Nor is the second emphasized limitation taught or suggested by the prior art. Setting a market price for the instrument based, at least in part, on criteria associated with the movie or movie talent is not disclosed in the prior art. This feature of applicants' invention allows, for example, for setting an initial price of a new stock associated with a movie based on a movie's potential box office revenue or setting the initial yield of a new bond associated with the popularity of a movie talent, which was not provided for in the prior art (see specification at page 11, lines 18-24). Thus, the step of setting the market price based on these criteria is novel, and is not taught or suggested by the prior art. Indeed, the Examiner has not even attempted to indicate any such teaching or motivation in Hunt, Daughtery, III, or any other reference, that has anything to do with trading instruments that represent movies or movie talent, let alone the limitations of claims 20-22.

This provides yet another reason why the Examiner has failed to make the required *prima facie* showing that claims 20-22 are obvious. Thus, even if claims 1-19 were obvious - and they are not - claims 20-22 would nonetheless be patentable based on the additional claimed feature of setting a market price based at least in part on criteria associated with the movie or the movie talent.

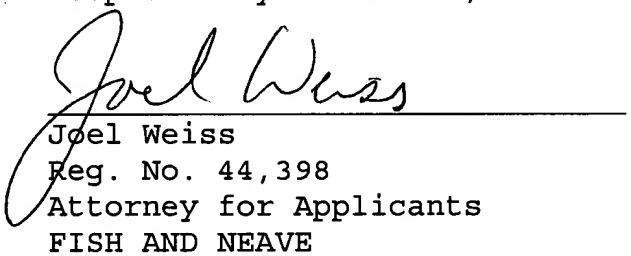
For at least the above reasons, none of the prior art of record, alone or in combination, teaches or suggests the invention as set forth in claims 20-22, and the improper rejection of claims 20-22 should be overturned.

VIII. CONCLUSION

In view of the foregoing, it is believed that all pending claims 1-22 are in proper condition for allowance, and the Board is respectfully requested to overturn the Examiner's rejection of these claims.

The Commissioner is hereby authorized to charge any additional fees which may be required, or to credit any overpayment, to the undersigned attorney's Deposit Account No. 06-1075. A separate Authorization to Charge Deposit Account is enclosed for that purpose (in duplicate).

Respectfully submitted,



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IX. CLAIMS APPENDIX

Claims Currently Pending

1. A method for trading a plurality of derivative financial instruments over the Internet, comprising:

receiving a first order to buy a derivative financial instrument that selectively represents a movie or a movie talent in an entertainment industry, said movie corresponding to a stock and said movie talent corresponding to a bond for trading over the Internet;

receiving a second order to sell said derivative financial instrument;

setting a market price based on the received first and second orders; and

executing a trade at the set market price.

2. The method according to claim 1, further comprising setting a price for a new stock offering on the basis of a potential box office revenue for a movie represented by said new stock offering.

3. The method according to claim 1, further comprising setting a price for a new bond offering on the basis of a

talent's popularity rating in the entertainment industry, such that one bond representing one talent with a low popularity rating is issued with a higher yield than another bond representing another talent with a high popularity rating.

4. The method according to claim 1, wherein the set market price is represented by electronic currency.

5. The method according to claim 4, further comprising debiting a first account controlled by a first trader who issued said first order in the electronic currency for the executed trade, and crediting a second account controlled by a second trader who issued said second order with proceeds in the electronic currency for the executed trade.

6. The method according to claim 5, wherein the electronic currency is Hollywood dollars.

7. The method according to claim 1, wherein the set market price reflects a current production status of said movie.

8. The method according to claim 1, wherein the set market price is indicative of the traders' interest in said

movie such that a potential box office revenue for said movie may be predicted far in advance of the movie release.

9. The method according to claim 1, wherein the set market price is indicative of the traders' interest in said talent such that a potential box office revenue for said movie may be predicted far in advance of the movie release.

10. A system for trading a plurality of derivative financial instruments over the Internet, comprising:

means for receiving a first order to buy a derivative financial instrument that selectively represents a movie or a movie talent in an entertainment industry, said movie corresponding to a stock and said movie talent corresponding to a bond for trading over the Internet;

means for receiving a second order to sell said derivative financial instrument;

means for setting a market price based on the received first and second orders; and

means for executing a trade at the set market price.

11. The system according to claim 10, further comprising means for setting a price for a new stock offering on the basis

of a potential box office revenue for a movie represented by said new stock offering.

12. The system according to claim 10, further comprising means for setting a price for a new bond offering on the basis of a talent's popularity rating in the entertainment industry, such that one bond representing one talent with a low popularity rating is issued with a higher yield than another bond representing another talent with a high popularity rating.

13. The system according to claim 10, wherein the set market price is represented by electronic currency.

14. The system according to claim 13, further comprising means for debiting a first account controlled by a first trader who issued said first order in the electronic currency for the executed trade, and means for crediting a second account controlled by a second trader who issued said second order with proceeds in the electronic currency for the executed trade.

15. The system according to claim 14, wherein the electronic currency is Hollywood dollars.

16. The system according to claim 10, wherein the set market price reflects a current production status of said movie.

17. The system according to claim 10, wherein the set market price is indicative of the traders' interest in said movie such that a potential box office revenue for said movie may be predicted far in advance of the movie release.

18. The system according to claim 10, wherein the set market price is indicative of the traders' interest in said talent such that a potential box office revenue for said movie may be predicted far in advance of the movie release.

19. A computer-readable storage medium for storing program code means for, when executed, causing a computer to perform a method for trading a plurality of derivative financial instruments over the Internet, the method comprising:

receiving a first order to buy a derivative financial instrument that selectively represents a movie or a movie talent in an entertainment industry, said movie corresponding to a stock and said movie talent corresponding to a bond for trading over the Internet;

receiving a second order to sell said derivative financial instrument;

setting a market price based on the received first and second orders; and

executing a trade at the set market price.

20. A method for trading a plurality of derivative financial instruments over the Internet, comprising:

receiving a first order to buy a derivative financial instrument that selectively represents a movie or movie talent in an entertainment industry, said movie corresponding to a stock and said movie talent corresponding to a bond for trading over the Internet;

receiving a second order to sell said derivative financial instrument;

setting a market price based at least in part on criteria associated with the movie or the movie talent; and

executing a trade at the set market price.

21. A system for trading a plurality of derivative financial instruments over the Internet, comprising:

means for receiving a first order to buy a derivative financial instrument that selectively represents a movie or

movie talent in an entertainment industry, said movie corresponding to a stock and said movie talent corresponding to a bond for trading over the Internet;

means for receiving a second order to sell said derivative financial instrument;

means for setting a market price based at least in part on criteria associated with the movie or the movie talent; and

means for executing a trade at the set market price.

22. A computer-readable storage medium for storing program code means for, when executed, causing a computer to perform a method for trading a plurality of derivative financial instruments over the Internet, comprising:

receiving a first order to buy a derivative financial instrument that selectively represents a movie or movie talent in an entertainment industry, said movie corresponding to a stock and said movie talent corresponding to a bond for trading over the Internet;

receiving a second order to sell said derivative financial instrument;

setting a market price based at least in part on criteria associated with the movie

or the movie talent; and

executing a trade at the set market price.

X. RELATED PROCEEDINGS APPENDIX

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/382,907	08/25/1999	TIMOTHY M. KEISER	10269/11	5840

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EXAMINER
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ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

DOCKETED FOR 9/2/04
Reply Brief due

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/382,907
Filing Date: August 25, 1999
Appellant(s): KEISER ET AL.

Joel Weiss
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 3/29/04.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 1, 3-9 and 11-14 all stand or fall together.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

3,581,072	Nymeyer	3-1968
5,819,238	Fernholz	10-1998

5,826,241 Stein et al 10-1998

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1, 3, 8, 9, 11, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nymeyer (US Patent 3,581,072), and further in view of Fernholz (5,819,238).

As per claims 1, 9, 14, Nymeyer discloses:

Measuring an imbalance between the buy orders and sell orders for the instrument received over a given period/means for measuring an imbalance between the buy orders and sell orders for the instrument received over a given period, (Col. 7, lines 64-74);

Computing a projected price movement based on the measured imbalance between the number of buy and sell orders/means for computing a projected price movement based on the measured imbalance between the number of buy and sell orders, (Col. 7, lines 71-74);

Setting a market price for the instrument based upon the received buy and sell orders and the measured imbalance/means for setting a market price for the instrument

based upon the received buy and sell orders and the measured imbalance, (Abstract, lines 1-3);

Automatically generating additional buy orders for the instrument at the market price to guarantee execution of some or all of the received buy or sell orders/means for automatically generating additional buy orders for the instrument at the market price to guarantee execution of some or all of the received buy or sell orders, (Col. 11, line 68-Col. 12, line 3).

Nymeyer fails to disclose the following, however Fernholz discloses:

Generating an electronic currency to execute the buy and sell orders/means for generating an electronic currency to execute the buy and sell orders (Col. 12, lines 16-17, here Fernholz discloses the custodial bank holds electronic cash which is distributed for trade purposes).

[Crediting a first trader's account with proceeds/debiting a second trader's account] in the electronic currency for the executed sell/buy orders by the first/second trader/means for [crediting a first trader's account with proceeds/debiting a second trader's account] in the electronic currency for the executed sell/buy orders by the first/second trader (Col. 12, lines 50-55).

It would have been obvious to one of ordinary skill in the art to generate electronic currency and to credit or debit the traders' accounts with electronic currency for executed buy/sell orders with the motivation of initiating and finalizing the trade.

As per claims 3, 11, Nymeyer discloses:

Further comprising exchanging the Hollywood dollars in the first or second trader's account for desired currency/further comprising means for exchanging the Hollywood dollars in the first or second trader's account for desired currency, (Col. 1, lines 12-29, wherein claim limitation is merely describing a trade).

As per claims 8, 13, Nymeyer discloses:

Wherein the additional buy orders or sell orders for the instrument are automatically generated at the market price if the projected price movement is greater than or equals a predetermined price movement threshold, (Col. 7, lines 44-61).

3. Claims 4-7, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nymeyer (US Patent 3,581,072), and further in view of Fernholz (5,819,238), and further in view of Stein, et al (US Patent 5,826,241).

As per claims 4-7, 12, neither Nymeyer nor Fernholz disclose the following, however Stein, et al discloses:

Wherein the electronic currency are exchanged at a currency exchange web site, and wherein a request for the exchange is transmitted to the currency exchange web site via a secured communication/further comprising purchasing goods or services using the electronic currency in the first or second trader's account, the goods or services being offered for sale by an on-line vendor via a web site on the Internet/wherein a request for the purchase is transmitted to the vendor's web site via a secured communication/wherein the vendor debits the first or second trader's account in the electronic currency for the purchase of goods or services via a secured communication/means for purchasing goods or services using the electronic currency in

the first or second trader's account, the goods or services being offered for sale by an on-line vendor via a web site on the Internet, (Col. 9, lines 49-54).

It would have been obvious to one of ordinary skill in the art to request an exchange, to purchase goods, to request a purchase, and to debit accounts through a website on the Internet via secure communications with the motivation of executing financial transactions on the Internet using the most common tools in Internet technology, thereby making the most logical, safest purchases with low risk factors. Stein doesn't specifically state that the exchange is done on a web site, however he does disclose that the exchange is done on the Internet making the implementation through a web site obvious.

(11) Response to Argument

As per claim 1, appellant argues that Nymeyer fails to disclose the "automatically generating additional buy orders or sell orders for the instrument at the market price to guarantee execution of some or all of the received buy or sell orders" step, and argues that Nymeyer is merely setting an appropriate price for "at market" orders that have already been entered since the Abstract of Nymeyer discloses that "Unpriced or 'at market' orders are assigned prices based upon the market price...". However, Nymeyer discloses this step specifically in Col. 11, line 68-Col. 12, line 3. Here, Nymeyer discloses that "at market" orders are determined by adding on a minimum price increment to the closing price for buy orders and reducing the closing price by one minimum increment for sell orders. In this case, the increment/reduction to the closing price for buy and sell orders represent the additional buy orders and sell orders since

this increment/reduction would change the value of the buy/sell order for a particular closing price. "At market" orders are assigned based upon the market price, but are not assigned the market price. Since the minimum price increment is incorporated when determining "at market" orders, these new prices generated represent the additional buy/sell orders.

In addition, appellant argues that Fernholz does not make up the deficiency of Nymeyer. As per claim 1, the Fernholz reference was incorporated to make up the following deficiency of the Nymeyer reference: "generating electronic currency". However, this limitation is taught by Fernholz in Col. 12, lines 15-16 where the custodial bank is introduced. Fernholz shows that the custodial bank holds cash in electronic form. Then, lines 23-25 disclose that the custodial bank updates cash balance in each portfolio. In this case, updating the cash balance in electronic form represents the generation of electronic currency in each portfolio. As per claim 1, the last 3 steps disclose "generating an electronic currency to execute the buy and sell orders", "crediting a first trader's account with proceeds in the electronic currency for the executed sell orders by the first trader", and "debiting a second trader's account in the electronic currency for the executed buy orders by the second trader". These steps merely represent electronic funds transfer. In this case, funds are being transferred from one account to another, which is the same as generating electronic currency. Therefore, Fernholz discloses the generation of electronic currency.

Appellant also argues that Stein does not make up the deficiency of Nymeyer. The Stein reference was not used to reject claim 1, and is therefore irrelevant to the argument of claim 1.

For the reasons stated above, claim 1 is still rejected under 35 U.S.C. 103(a) as being unpatentable over Nymeyer (US Patent 3,581,072), and further in view of Fernholz (5,819,238). Since claims 3-9, and 11-14 all stand or fall together with claim1, claims 3-9 and 11-14 are still rejected for the same reasons as claim 1.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

A. R. B.
June 15, 2004

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